

## § 296.11

## 46 CFR Ch. II (10–1–10 Edition)

(2) Operates or manages other United States-documented vessels for the SecDef, or charters other vessels to the SecDef;

(3) Has entered into a special security agreement with the SecDef;

(4) Certifies to the Secretary, at the time of application, in a format substantially similar to the format of § 296.3(b)(13), that there are no treaties, statutes, regulations, or other laws that would prohibit the Contractor from performing its obligations under an MSP Operating Agreement; and

(5) Has its ultimate foreign parent proffer, at the time of application for an MSP Operating Agreement, an agreement in a format substantially similar to the format of § 296.3(b)(14) not to influence the vessel's operation in a way that is detrimental to the United States.

(d) The vessel is owned by a documentation citizen and demise chartered to a Section 2 Citizen.

(e) Where applicable, the Secretary and the SecDef shall notify the Senate Committees on Armed Services, and Commerce, Science, and Transportation and the House of Representatives Committee on Armed Services that they concur with the certifications by the documentation citizens under § 296.3(b)(13) and that they have reviewed the agreements proffered by the ultimate foreign parent under § 296.3(b)(14), and agree that there are no other legal, operational, or other impediments that would prohibit the contractors for the vessels from performing their obligations under MSP Operating Agreements.

### § 296.11 Vessel requirements.

(a) *Eligible Vessel.* A vessel is eligible to be included in an MSP Operating Agreement if:

(1) The vessel is:

(i) Determined by the SecDef to be suitable for use by the United States for national defense or military purposes in time of war or national emergency; and

(ii) Determined by the Secretary to be commercially viable;

(2) The vessel is operated or, in the case of a vessel to be purchased or constructed, will be operated to provide

transportation in the foreign commerce;

(3) The vessel is self-propelled and is:

(i) A Roll-on/Roll-off vessel with a carrying capacity of at least 80,000 square feet or 500 twenty-foot equivalent units and is 15 years of age or less on the date the vessel is included in the MSP;

(ii) A tank vessel that is constructed in the United States after November 24, 2003;

(iii) A tank vessel that is 10 years of age or less on the date the vessel is included in the MSP Fleet;

(iv) A LASH vessel that is 25 years of age or less on the date the vessel is included in the MSP fleet; or

(v) Any other type of vessel that is 15 years of age or less on the date the vessel is included in the MSP fleet;

(4) The vessel is:

(i) A United States documented vessel under 46 U.S.C. chapter 121; or

(ii) Not a United States-documented vessel under 46 U.S.C. chapter 121, but the owner of the vessel has demonstrated an intent to have the vessel documented under 46 U.S.C. chapter 121 at the time the vessel is to be included in the MSP fleet; and

(A) The vessel is eligible for a certificate of inspection if the Secretary of the Department in which the United States Coast Guard is operating determines that:

(1) The vessel is classed and designed in accordance with the rules of the American Bureau of Shipping (ABS) or another classification society accepted by such Secretary;

(2) The vessel complies with applicable international agreements and associated guidelines as determined by the country in which the vessel was documented immediately before becoming a U.S.-flag vessel; and

(3) The flag country has not been identified by such Secretary as inadequately enforcing international vessel regulations.

(B) [Reserved]

(b) *Waiver of Age Restriction of Vessels.* The SecDef, in conjunction with the Secretary, may waive the age restriction in paragraph (a) of this section if the Secretaries jointly determine that the waiver:

(1) Is in the national interest;

(2) Is appropriate to allow the maintenance of the economic viability of the vessel and any associated operating network; and

(3) Is necessary due to the lack of availability of other vessels and operators that comply with the requirements of the MSA 2003.

(c) *Telecommunications and Other Electronic Equipment.* The telecommunications and other electronic equipment on an existing vessel that is redocumented under the laws of the United States for operation under an MSP Operating Agreement shall be deemed to satisfy all Federal Communications Commission equipment certification requirements, if

(1) Such equipment complies with all applicable international agreements and associated guidelines as determined by the country in which the vessel was documented immediately before becoming documented under the laws of the United States;

(2) That country has not been identified by the Secretary as inadequately enforcing international regulations as to that vessel; and

(3) At the end of its useful life, such equipment will be replaced with equipment that meets Federal Communications Commission equipment certification standards (see 47 CFR Chapter I).

[70 FR 55588, Sept. 22, 2005; 70 FR 59400, Oct. 12, 2005]

#### § 296.12 Applicants.

*Applicant.* Owners or operators of an eligible vessel may apply to MARAD for inclusion of that vessel in the MSP Fleet pursuant to the provisions of the MSA 2003. Applications shall be addressed to the Secretary, Maritime Administration, Room 7218, Maritime Administration, U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590.

### Subpart C—Priority for Granting Applications

#### § 296.20 Tank vessels.

(a) First priority for the award of MSP Operating Agreements under MSA 2003 shall be granted to a tank vessel

that is constructed in the United States after October 1, 2004.

(b) First priority for the award of MSP Operating Agreements under the MSA 2003 may be granted to a tank vessel that is less than ten years of age on the date it enters an MSP Operating Agreement:

(1) *Provided:* (i) That the Contractor agrees to execute a binding agreement approved by the Secretary for a replacement vessel to be operated under the MSP Operating Agreement and to be built in the United States not later than nine months after the first date appropriated funds are available for construction and operating assistance for a minimum of three tank vessels;

(ii) A tank vessel under this section is eligible to be included in the MSP under § 296.11(a); and

(iii) A tank vessel under this section is owned and operated during the period of the MSP Operating Agreement by one or more persons that are Section 2 Citizens;

(2) No payment can be made for an existing tank vessel granted priority one status after the earlier of:

(i) Four years following the date this MSP Operating Agreement is effective, except if amounts are available for construction of a minimum of three tank vessels under the National Defense Tank Vessel Construction Assistance Program (NDTVCP) by October 1, 2007, then no payments shall be made for the existing “tank vessel” after four years following the date such amounts are available; or

(ii) The date of delivery of the replacement tank vessel constructed in the United States after October 1, 2004.

(3) The Secretary will not enter into more than five MSP Operating Agreements for tank vessels under this priority. If the five tank vessel MSP Operating Agreement slots are not fully subscribed, the Secretary, in consultation with the SecDef, may award the non-subscribed slots to lower priority vessels, if deemed appropriate. If the Secretary determines that no funds are, or are likely to be, allocated for any tank vessel construction in the United States, the five slots may nevertheless be awarded to existing tank vessels or the slots may be awarded permanently to any eligible vessels.